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UMG RECORDINGS, INC.; ARISTA RECORDS
LLC; ELEKTRA ENTERTAINMENT GROUP
INC.; CAPITOL RECORDS, INC.; LAFACE
RECORDS LLC; SONY BMG MUSIC
ENTERTAINMENT; and MOTOWN RECORD
COMPANY, L.P.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UMG RECORDINGS, INC., a Delaware
corporation; ARISTA RECORDS LLC, a
Delaware limited liability company; ELEKTRA
ENTERTAINMENT GROUP INC., a Delaware
corporation; CAPITOL RECORDS, INC., a
Delaware corporation; LAFACE RECORDS
LLC, a Delaware limited liability company;
SONY BMG MUSIC ENTERTAINMENT, a
Delaware general partnership; and MOTOWN
RECORD COMPANY, L.P., a California
limited partnership,

Plaintiffs,

v.

JOHN DOE,

Defendant.

CASE NO. 5:07-CV-06033-RMW

Honorable Ronald M. Whyte

***EX PARTE APPLICATION TO EXTEND
TIME TO SERVE DEFENDANT AND
[PROPOSED] ORDER***

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CASE NO. 5:07-CV-06033-RMW

#38442 V1

1 Plaintiffs respectfully request, pursuant to the Federal Rules of Civil Procedure, Rules 4(m)
2 and 6(b)(1)(A), that the Court grant an additional 60 days to serve Defendant with the Summons and
3 Complaint. As further explained below, Plaintiffs have believe they have discovered the identity of
4 the Doe defendant in this case and have contacted this person in an attempt to resolve the dispute
5 without further litigation. Plaintiffs thus seek additional time to effectuate service in the event the
6 dispute is not resolved and Plaintiffs file a First Amended Complaint naming Defendant
7 individually. In support of their request, Plaintiffs state as follows:

8 1. The current deadline for service of process is June 26, 2008. The initial case
9 management conference is set for July 25, at 10:30 a.m. The case management conference and
10 service deadline were both previously continued once upon Plaintiffs' request by the Court's Order
11 of March 19, 2008.

12 2. Plaintiffs filed their Complaint for Copyright Infringement against Defendant John
13 Doe ("Defendant") on November 29, 2007. Plaintiffs did not have sufficient identifying information
14 to name Defendant in the Complaint, but were able to identify Defendant by the Internet Protocol
15 address assigned to Defendant by Defendant's Internet Service Provider ("ISP") – here, University
16 of California, Berkeley.

17 3. In order to determine Defendant's true name and identity, Plaintiffs filed their *Ex*
18 *Parte* Application for Leave to Take Immediate Discovery on November 29, 2007, requesting that
19 the Court enter an Order allowing Plaintiffs to serve a Rule 45 subpoena on the ISP.

20 4. Plaintiffs withdrew their *Ex Parte* Application for Leave to take Immediate Discovery
21 on March 17, 2008, because, upon receiving notice of the lawsuit from the ISP, the Defendant,
22 though her attorney, came forward to identify herself.

23 5. Thereafter, settlement discussions took place with Defendant and her attorney, and
24 Plaintiffs believe that a settlement has been reached. Settlement documents were mailed on May 29,
25 2008, but have not yet been executed and returned to Plaintiffs.

26 6. If the signed settlement documents are returned by July 15, 2008 or shortly thereafter,
27 Plaintiffs will file appropriate dispositional documents with the Court. If not, Plaintiffs plan to file a
28

1 First Amended Complaint naming the Defendant in this case, and then proceed to serve process upon
2 her.

3 7. Given the circumstances of this case, Plaintiffs respectfully request an additional 60
4 days to effectuate service.

5 8. Plaintiffs submit that their efforts to notify Defendant of their claims and resolve the
6 case before naming her in the lawsuit constitute good cause for any delay in perfecting service. *See*
7 *Ritts v. Dealers Alliance Credit Corp.*, 989 F. Supp. 1475, 1479 (N.D. Ga. 1997) (stating good cause
8 standard for service extensions). Moreover, unlike a traditional case in which the defendant is
9 known by name and efforts to serve can begin immediately after filing the complaint, in this case
10 Plaintiffs first attempted obtain the identity of the defendant through the subpoena to the ISP. This
11 Court has discretion to enlarge the time to serve even where there is no good cause shown.
12 *Henderson v. United States*, 517 U.S. 654, 658 n. 5 (1996).

13 9. Because the copyright infringements here occurred in 2007, the three-year limitations
14 period for these claims has not expired. *See* 17 U.S.C. § 507(b) (2000). There can thus be no
15 prejudice to the Defendant from any delay in serving the Complaint.

16 10. Plaintiffs will provide the Defendant with a copy of this request and any Order
17 concerning this request when service of process occurs.

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19 Dated: September 20, 2007

HOLME ROBERTS & OWEN LLP

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21 By: /s/ Dawniell Alise Zavala
22 DAWNIELL ALISE ZAVALA
23 Attorney for Plaintiffs
24 UMG RECORDINGS, INC.; ARISTA
25 RECORDS LLC; ELEKTRA
26 ENTERTAINMENT GROUP INC.;
27 CAPITOL RECORDS, INC.; LAFACE
28 RECORDS LLC; SONY BMG MUSIC
ENTERTAINMENT; and MOTOWN
RECORD COMPANY, L.P.

[PROPOSED] ORDER

Good cause having been shown:

IT IS ORDERED that, pursuant to the Federal Rules of Civil Procedure, Rules 4(m) and 6(b)(1), Plaintiffs' time to serve the Summons and Complaint on Defendant be extended to August 22, 2008.

Dated: _____

By: _____
Honorable Ronald M. Whyte
United States District Judge